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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/095,323	06/10/1998	MICHAEL D. LAUFER	649218007US	9521
74851	7590	04/04/2008		
PERKINS COIE LLP PATENT SEA P.O. BOX 1247 SEATTLE, WA 98111			EXAMINER SHAY, DAVID M	
			ART UNIT 3735	PAPER NUMBER
			MAIL DATE 04/04/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/095,323

**Applicant(s)**

LAUFER, MICHAEL D.

**Examiner**

david shay

**Art Unit**

3735

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on October 31, 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 29-37, 50 and 52-62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29-37, 50 and 52-62 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date October 31, 2007

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 31, 2007 has been entered.

Applicant has argued that the claiming of reducing the ability of the smooth muscle to contract, however, it appears from the originally filed disclosure, that the manner in which this is achieved is simply by damaging or killing the smooth muscle cells, which is essentially what Clarke (US '033) is doing.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 29-37, 50, and 52-62 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The originally filed disclosure is silent on irradiating the tissue "such that the ability of the smooth muscle to contract is reduced" further any particular parameters with regard to power, power density; energy; or energy density, for example, particularly those that would produce this particular effect are also not disclosed.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 29-37, 50, and 52-62 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are indefinite as the term “such that the ability of the smooth muscle to contract is reduced” lacks positive antecedent basis in the originally filed disclosure and thus the exact meaning of this term is unclear.

Claims 29, 32-34, 37, 50, and 56-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over James et al in combination with Clarke (US '033) and Regunathan et al. James et al teach that the mechanisms involved in airway narrowing in asthma include hypertrophy of smooth muscle. Regunathan et al teach that restenosis is a result of hypertrophy of smooth muscle cells. Clarke (US '033) teaches that restenosis can be treated by irradiation of the lumen wall with lasers radiation having wavelengths in the claimed ranges to prevent the replication and growth of smooth muscle cells. It would have been obvious to the artisan of ordinary skill use the method of Clarke (US '033) for treating asthma, since both asthma and restenosis involve hypertrophy of smooth muscle cells, as taught by James et al and Regunathan et al, and to move the device while irradiating, since this would allow the treatment longer lesions, thus producing a method such as claimed.

Claims 30 and 35 are rejected under 35 USC 103 a, as being unpatentable over James et al in combination with Clarke (US '033) and Regunathan et al as applied to claims 29, 32-34, 37, 50, and 56-59 and further in combination with Vincent et al. Vincent et al teach the desirability

of treating proliferation of smooth muscle cells with irradiation with red light. It would have been obvious to the artisan of ordinary skill to employ irradiation with red light in the combined method of James et al, Clarke (US '033), and Regunathan et al, since this helps prevent smooth muscle cells from forming luminal occlusions, thus producing a method such as claimed.

Claim 36 is rejected under 35 USC 103 a, as being unpatentable over James et al in combination with Clarke (US '033) and Regunathan et al as applied to claims 29, 32-34, 37, 50, and 56-59 and further in combination with Waksman et al. Waksman et al teach the compatibility of radiation treatment and laser treatment for lumens including blood vessels and bronchi. It would have been obvious to the artisan of ordinary skill to employ irradiation with a radioactive pellet in the combined method of James et al, Clarke (US '033), and Regunathan et al, since this helps prevent smooth muscle cells from forming luminal occlusions, and is compatible with laser treatment, as taught by thus Waksman et al, thus producing a method such as claimed.

Claims 52-55 are rejected under 35 USC 103 a, as being unpatentable over James et al in combination with Clarke (US '033) and Regunathan et al as applied to claims 29, 32-34, 37, 50, and 56-59 and further in combination with Lax et al. Lax et al teach the desirability of employing a painting motion and the use of an endoscope when performing volume reduction procedures on tissue. It would have been obvious to the artisan of ordinary skill to employ a painting motion and endoscopic visualization in the combined method of James et al, Clarke (US '033), and Regunathan et al, since this would allow even disposition of energy and visualization of the treatment site, respectively, thus producing a method such as claimed.

Claims 60-62 are rejected under 35 USC 103 a, as being unpatentable over James et al in combination with Clarke (US '033) and Regunathan et al as applied to claims 29, 32-34, 37, 50, and 56-59 and further in combination with Robinson et al and Levenson et al. Robinson et al teach the use of furocoumarin to prevent excess proliferation of smooth muscle cells. Levenson et al teach that furocoumarins include psoralens. It would have been obvious to the artisan of ordinary skill to employ a psoralen in the combined method of James et al, Clarke (US '033), and Regunathan et al, since this helps to prevent smooth muscle cells from replicating, thus producing a method such as claimed.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 29, 30, 32-35, 37, 50, and 52-59 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent Application No. 11/614,919. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application

claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 29, 30, 32-35, 37, 50, and 52-59 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent Application No. 11/612,620. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 29, 30, 32-35, 37, 50, and 52-59 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 21-25 of U.S. Patent Application No. 11/618,533. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent Application No. 11/609,242. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant



application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent Application No. 11/608,606. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent

Application No. 11/425,345. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent Application No. 11/421,444. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower

invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-40 of U.S. Patent Application No. 11/398,353. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-51 of U.S. Patent Application No. 11/408,668. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the

claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 11-20 of U.S. Patent Application No. 11/420,442. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 26 and 27 of U.S. Patent Application No. 11/361,564. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 15-29 and 32 of U.S. Patent Application No. 11/117,905. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application

claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 29, 30, 32-35, 37, 50, and 52-59 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent Application No. 10/810,276. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application anticipate the claims of the instant application. Accordingly, instant application claims are not patentably distinct from the copending application claims. Here, the copending application claims require elements A, B, C, and D while instant application claims only requires elements A, B, and C. Thus it is apparent that the more specific copending application claims encompass the instant application claims. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 5,972,026. It would have been obvious to the artisan of ordinary skill to use the device for its intended purpose.

Claims 50, 52, and 53 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13-28 of copending Application No. 11/617,512. It would have been obvious to the artisan of ordinary skill to use the device for its intended purpose.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 50 and 56 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of copending Application No. 11/562,910. It would have been obvious to the artisan of ordinary skill to use the device for its intended purpose.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 81-100 of copending Application No. 11/614,914. It would have been obvious to the artisan of ordinary skill to use the device for its intended purpose.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 29, 30, 32-35, 37, 50, and 52-59 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 11/562,925. It would have been obvious to the artisan of ordinary skill to use the device for its intended purpose.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 29, 30, 32-35, 37, 50, and 52-59 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12-17 of copending Application No. 11/612,620. It would have been obvious to the artisan of ordinary skill to use the device for its intended purpose.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 29, 30, 32-35, 37, 50, and 52-59 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 11/618,533. It would have been obvious to the artisan of ordinary skill to use the device for its intended purpose.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12-36 of copending Application No. 11/608,606. It would have been obvious to the artisan of ordinary skill to use the device for its intended purpose.



This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 33 and 50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-25 of copending Application No. 11/361,564. It would have been obvious to the artisan of ordinary skill to locate the treatment site prior to treatment.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Applicant's arguments with respect to claims 29-37, 50, and 52-62 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Friday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II, can be reached on Monday, Tuesday, Wednesday, Thursday, and Friday. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

Art Unit: 3735

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private

PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/david shay/

Primary Examiner, Art Unit 3735